

1 notified your client?

2 MR. NEY: No, I'm just saying that I don't know
3 what the department would have determined it should have sent
4 to the parties who are on the list to receive notices. But I
5 have no question or issues about whether ENA received anything
6 that we didn't receive.

7 DEPUTY COMMISSIONER JONES: Mr. Ney.

8 MR. NEY: Yes, sir.

9 DEPUTY COMMISSIONER JONES: In regard to the
10 time that the award was made and your client reviewed the files
11 and you filed your original protest letter, at that time you
12 would have seen that the major difference or one of the major
13 differences in one of the areas of contention was the ENA
14 proposal to buy the surplus equipment. At that time, when you
15 filed your original protest letter, why wouldn't you have taken
16 up these issues and considered all of that surplus and stuff
17 then?

18 MR. NEY: Well, we did, in fact, include that
19 issue, not the disposition --

20 DEPUTY COMMISSIONER JONES: Right.

21 MR. NEY: -- but as you have noticed, obviously,
22 the notice is a big issue because we made a big issue of it
23 ourselves. Not in this context and that is only because up
24 until we made the request for supplemental files, or what we
25 thought may be supplemental State files, and found out that

1 they didn't exist. It was only then that we knew the facts.

2 DEPUTY COMMISSIONER JONES: Should you have not
3 known the facts, I guess, is my point?

4 MR. NEY: I think not but that is obviously the
5 debate of the issue. I think we acted promptly and ultimately
6 is an issue beyond the protest issue, it is a State issue.

7 MR. LEE: During the time that you was reviewing
8 the files, were you ever denied the access to any of the files?

9 MR. NEY: We don't know. As I said, this one
10 copy that was provided to us in the materials that Ms. Metcalf
11 provided was very different looking from what we found when we
12 went through there, but I don't know. It is not an issue that
13 we thought enough of to raise and we aren't making that
14 allegation.

15 MR. LEE: This is all of the questions I have.

16 COMMISSIONER HAWKINS: Any more questions?

17 DEPUTY COMMISSIONER JONES: No, let's take a
18 break.

19 COMMISSIONER HAWKINS: It is time to take a
20 short break. Thank you, Mr. Ney, for your presentation.

21 MR. NEY: Thank you.

22 COMMISSIONER HAWKINS: Let's take a short break
23 (Whereupon, a short recess was taken 9:37 a.m.)

24 (Whereupon, the following proceedings resumed at
25 9:58 a.m.)

1 COMMISSIONER HAWKINS: Okay. We are ready to
2 reconvene, Ms. Shrago.

3 MS. SHRAGO: We seek today to resolve the
4 protest of the State of Tennessee so that we enter a contract
5 with a bidder who was determined to be the most qualified in
6 response to the RFP for ConnectTEN, the expansion and operation.

7 Before I begin to respond specifically to the items of the
8 protest, I would like to review the purpose of our endeavor. I
9 am reading some selections from the original RFP as its
10 statement of purpose. First of all, in terms of K12 (e), the
11 school environment is very different from that of the business
12 environment. One, it has been and will continue to be an
13 important issue of implacing technology in the schools.

14 The upgrade of ConnectTEN must provide fair and equitable
15 access to the Internet for all public schools and their
16 students. The upgrade must be planned and executed to minimize
17 the lack of network availability for students and teachers.

18 The ConnectTEN project was started with a vision of
19 connecting all Tennessee public schools with the minimum of one
20 computer in the school library with the access for one hour per
21 child per week in every school. Since the number of students
22 to computers is quite high, the computers are in continuous
23 use. The purpose of the Internet connection is to provide
24 instructional opportunities for our students organized by
25 teachers.

1 Fair and equitable treatment must be provided to all school
2 sites in all education agencies. Functionality, reliability,
3 and improved security are all of significant importance to
4 allow teachers to use the network for instructional purposes in
5 the classroom. All of those are in the statement of purpose.

6 Those of you on the review panel who know Tennessee schools
7 and know our students, know that in many of our school
8 libraries there are no books that anticipate man being on the
9 moon. We have students in some isolated areas who have never
10 been to McDonald's or stepped on an escalator, but then the
11 Internet opens the world. Through it they can see pictures,
12 meet people, explore ideas and receive and create information
13 that changes their lives.

14 The excitement of our schools for ConnectTEN is thrilling; I
15 have been glad to be a part of it. It motivates poor students,
16 it enlivens teachers who have gotten burned out, it offers
17 resources of the world's libraries and museums, it even reaches
18 to the least available child in any county in this State. So
19 those in Raye County have the same opportunity as those in
20 Williamson County. Parents in Polk County climbed ladders and
21 pulled wires so that everyone of their classrooms could get
22 connected.

23 The Johnson County School Board put up the largest
24 expenditure ever for computers. We planned ConnectTEN for
25 7,000. We have 50,000 computers now. We expect that to grow

1 to 90,000 in two years. This expansion and capability would
2 not be possible for Tennessee except for a very new and dynamic
3 program; it is called the E-rate.

4 The Congress and the President realized that for our
5 schools to really have enough technology there were going to
6 need to be new initiatives in creating funding sources found.
7 Together they agreed to a special provision of the
8 Telecommunications Act of 1996. Wiring and connection to the
9 Internet have been understood to be extremely important,
10 assuring that the have and the have nots are treated equally
11 and have access to the world's information.

12 It created the E-rate Program allowing schools and
13 libraries to submit applications based on the percent of free
14 and reduced lunch students so that they may obtain substantial
15 discounts of telecommunications in computer networking
16 services.

17 In 1934 this country made a similar commitment so that
18 every home would be wired with a telephone, no matter how
19 isolated. It is that same law that has now been expanded to
20 provide a similar commitment to wire every classroom.

21 1998 is the first year of this program. They didn't set it
22 up as a grant program because they wanted schools to be
23 committed and ready to use the technology. There are a variety
24 of rules. Schools have to have plans, they have to pay part of
25 the funding, they have to ensure that teachers will be trained

1 and that there are enough computers to make the use of the
2 network viable.

3 They also establish wide flexibility so that schools could
4 decide what they need in their community and try not to
5 establish those kinds of rules from Washington. This provision
6 passed the Congress by overwhelming bipartisan margin. Its
7 continuation has been once again affirmed including the money
8 to establish a \$2.25 billion program, but it is not a federal
9 budget item. It is obtained through contributions from
10 corporations as a result of deregulating the telecommunications
11 industry.

12 Tennessee, when compared to all of the states in the
13 country, was one of the first to realize the potential of
14 networks and the connection to the Internet. So Tennessee has
15 been a leader in working with the parties in Washington to
16 clarify, refine and get this initial program up and running.

17 Tennessee was also prepared to take advantage of this
18 unique opportunity to get this discount for services for all
19 Tennessee schools. The Federal Communications Commission and
20 its administrative arm were charged with establishing the
21 program. They established that schools would have to apply
22 each calendar year for discounts and that they would be
23 approved on a first come, first serve basis.

24 However, in the first year they established the 75 day
25 window, meaning that all who apply within that window would be

1 treated with the same priority. They have received 40,000
2 initial applications with a specific request for funding due
3 with all of their paperwork by April 15.

4 The State issued an RFP where proposers were given wide
5 opportunities to offer the maximum service level possible for
6 the public schools of Tennessee. However, a proposer was also
7 expected to offer services responding to the situation of
8 receiving E-rate funding and the possibility of not receiving
9 E-rate funding in 1998, 1999, 2000 and 2001.

10 This uncertainty because the State can only apply one year
11 at a time and the fact that the contract is actually for three
12 and a half years left the burden of adjusting to the funding
13 variations as the responsibility of the bidder.

14 Obviously, the bidder would not be required to deliver the
15 same services with and without the funding. However, the
16 difficulty in a network is that once you have purchased
17 equipment and make communication line connections for one level
18 of service, you then have to reduce that capacity in order to
19 reduce your substantial recurring cost if the funding level
20 drops. Proposers were required to describe service levels with
21 and without E-rate funding in an every six month period of the
22 contract.

23 Let me speak to the cost formula. The evaluation and
24 contract award, in Section 6, fully describes the cost formula.
25 It clearly showed, using an example, the advantage of proposing

1 additional funding to provide additional services.

2 The FCC articulated that the schools could obtain as many
3 services as they could afford to pay their share, which in
4 Tennessee's case is 33 percent. There were no other
5 stipulations about what we could apply for in terms of dollars.
6 And it required that we had to have an effective plan that
7 supports those services, trained teachers and sufficient
8 computers. Tennessee has all of those necessary elements.

9 Tennessee stated in the RFP that it was willing to put any
10 sources that proposers would offer, as well as savings of the
11 network, into the network. All services are to be invoiced in
12 two parts, one part to the State and one part to the FCC.

13 Because the State is eligible for the 66 percent discount
14 this means that the State could submit a contract to the FCC
15 for three times the amount of its available funds and meet the
16 financial commitments of the FCC; 1/3 would be paid by the
17 State and 2/3 by the FCC.

18 The amount of available funds from State and local sources
19 is defined in the RFP with the maximum of approximately 5.1
20 million in any fiscal year, plus any other sources that a
21 proposer could offer from the sale of equipment or salvage.
22 Therefore, in any year, the State could receive the benefit of
23 services for significantly more than its own available dollars.

24 The approval of the contract, following the notice of
25 intent to award, is necessary for Tennessee to finalize its

1 application and be eligible for the discounts. Without a
2 contract we cannot file the application. We seek your
3 agreement with our findings and conclusions in the Department
4 of Education that this contract should be awarded to Education
5 Networks of America.

6 Now let me turn to the specific responses in ISIS' letter.
7 I'm going to take them in a little different order. I'm going
8 to take Item 2 first. The ENA cost proposal misrepresents
9 E-rate rules and funding.

10 The E-rate funding is a significant component of the RFP.
11 Again, reading from the statement of purpose. Creativity is
12 particularly important in living within the classroom
13 constraints and providing a migration plan from the existing
14 capability and existing financial resources to the possibility
15 of the State eligibility and acceptance of E-rate discounts.
16 Creativity is also required to respond to the situation if
17 Tennessee's E-rate application in 1998 or the future years is
18 not funded.

19 In the written report to the response to the letter of
20 protest, which is already in the record, we responded
21 specifically to each of the items raised in the letter
22 of protest. There was Item 2 (A) on the current network and
23 its non-eligibility for capital expenditures; these are
24 basically the items that Mr. Ney has on the chart. There was
25 one about the ISDN and there was one regarding web content and

1 there was one regarding staff hours and teachers training.

2 We have identified specific sources for clarifying the
3 E-rate funding rules with reasons why we fully expect those
4 items to be eligible. There are some 3,500 pages of FCC
5 orders, guidelines, comments and clarifications. Having read
6 them all, there is plenty of room for interpretation among
7 those pages.

8 The State has been diligent. It has sought the advice of
9 an attorney in Washington who regularly handles FCC matters.
10 He has worked with us for over 200 hours in understanding our
11 situation and informing us of how those rules affect our
12 situation. I have been advised by that counsel, with whom I
13 spoke on Friday and again yesterday, that he has read the
14 pleading and has stated to me that he does not believe it has
15 merit. He was willing to come here this morning, but we
16 decided that it was not appropriate at this point and we really
17 didn't want to pay for his travel because my commissioner
18 doesn't like paying for travel. Anybody who knows her, knows
19 that.

20 Clearly this pleading represents one side of the story and
21 if it is actually filed with the FCC, and I now understand it
22 has been filed, we will respond. Clearly, since it has been
23 filed we are jeopardized from participating for funds and our
24 application is likely to be delayed for at least one year.

25 It is also clear that their request for an expedited

1 declaratory ruling is not valid because they do not show
2 immediate material harm and there is certainly no harm to them
3 before the application due date of April 15th. There will be
4 no application ruling by April 15.

5 We can spend a great deal of time examining these issues
6 this morning. However, I submit to the committee the
7 following. No. 1, the State has diligently familiarized itself
8 with the E-rate program over the last one and a half years.
9 No. 2, it developed the RFP in light of the E-rate program.
10 No. 3, it evaluated the responses in light of the needs of the
11 schools
12 of Tennessee and the E-rate program. No. 4, the burden was
13 placed on the contractor in terms of funds for the E-rate
14 program.

15 The FCC and the SLC are the only people who can fully
16 answer the items raised in this objection.

17 Let me turn to the last one on the E-rate funding because,
18 I think, it is important for us to consider here. Item 2 (E)
19 in the letter stated, the State apparently intends to award a
20 \$74 million contract to ENA when ISIS2000 proposed comparable
21 services to the state for \$23 million less. Well, this is an
22 E-rate issue; there is always concern if such a statement were
23 true.

24 I will specifically respond to this in terms of the
25 comparability of services. In fact, the proposal from ISIS is

1 not comparable to the proposal from ENA. The cost proposal in
2 the RFP states, the proposer must clearly show the capability
3 that will be provided through State and local funds and the
4 amount that the State and local agencies must pay for those
5 services.

6 RFP services should also be identified, which will be
7 provided as a result of the FCC discounts. For example, one
8 level of functionality might be proposed by using State funds
9 solely. A higher lever of functionality might be proposed when
10 the FCC E-rate funds are included. The proposer must clearly
11 identify the capability that would be provided for each period
12 throughout the life of the contract if the E-rate funding is
13 not available in any period.

14 The RFP describes that any other available funding must be
15 paid to the state -- that would be paid to the State and also
16 was to be used to increase the service level. An example of
17 how this would work is included in the cost proposal of the
18 RFP. It showed a comparison of one year funding where one
19 proposal offered services for 12.5 million and the second
20 offered proposals for 13.1 million with the latter receiving
21 more points in the awarding process.

22 This formula and examples were in the RFP from the
23 beginning. All were approved by the comptroller's office and
24 the Department of Finance and Administration before the RFP was
25 issued. It was also reviewed with our FCC attorney. It was

1 reviewed with the proposers in three pre-bidders conferences.
2 There were written questions by proposers and clarifications
3 issued. All proposers agreed to the formula and waived any
4 rights to oppose it based on the required review and waiver of
5 objections in the proposal Section 3.4.

6 Despite the requirements of the RFP to provide information
7 about the delivery of services with or without the E-rate, ISIS
8 did not provide this information in any of its cost
9 information.

10 ENA clearly described their services and costs with and
11 without E-rate funding in each of the seven, six month periods.
12 ISIS provided only cost information with E-rate funding. And
13 in identifying its services, even after a request for
14 clarification, it further confused the issue of the level of
15 services that would be offered without E-rate.

16 In responding to the statement that ISIS proposed
17 comparable services, we offer the following differences: I
18 want to go through a number of items of service levels that are
19 different. Capacity and reliability are critical to provide
20 services to schools where our number of computers has grown
21 from 7,000 to 50,000 and this is expected to grow to 90,000.
22 If I could get to the bottom line, the issue is delivering
23 information to the student's computer screen that is important,
24 appropriate, reliable, secure and is presented quickly enough
25 to be a learning experience for every student.

1 Before we look at the specifics, let me offer a comparison
2 for the context of costs. BellSouth Net provides a comparable
3 at 1,770 per school, per month; that represents a contract
4 price of \$133 million over the life of this contract, waiving
5 installation cost. This example is drawn from their current
6 price list.

7 ENA's proposal is \$74, which is 45 percent less. ISIS
8 offers their service at a questionable \$51 million and it is
9 not comparable. I can provide specifics related to these
10 services and how they are different as we go through each of
11 the cost items.

12 First of all, the Internet reliability index. Mr. Ney
13 accurately pointed out that there was significant differences
14 in POPS, which he said were unnecessary and caching, which he
15 said was unnecessary. Let me explain what that means in terms
16 of students.

17 Internet access during the school day 10:00 a.m. in the
18 morning, or any other time during the school day, is often
19 slow. The State of Utah actually demonstrated a 45 percent
20 increase in the use and productivity by its students when they
21 installed the kind of equipment, which is called caching
22 equipment, that ENA is proposing; that is not a trivial
23 difference in service.

24 This equipment can help teachers because they cannot
25 entertain students while they are waiting for the screen to

1 come up on the computer. ENA's approach is more reliable and
2 more expensive. The ENA approach happens to occur
3 automatically without teacher intervention. The capability
4 occurs in three levels in their network, not one.

5 ISIS stated in their proposal that in order to do this kind
6 of caching teachers would actually call the help desk every
7 time they wanted a site reserved. Teachers don't have phones
8 in their classrooms. Teachers cannot leave their class and
9 walk down the hall and make a phone call. Besides that, if we
10 imagined 50,000 teachers calling the help desk, when this help
11 desk currently handles 50 calls a day, it is simply not
12 workable.

13 ISIS in their proposal is not clear how or where the
14 caching capabilities will be implemented. The difference
15 between the two proposals is also pointed out in the amount of
16 security. There is less than half as much security in the ISIS
17 proposal. ENA has four security checkpoints; ISIS has one or
18 two. The RFP stated that it is a growing concern for schools
19 and will only increase as the usage increases.

20 Protection from pornography. It appears to be optional in
21 the ISIS proposal, but it is built in as a committed service
22 level in the ENA proposal. Given our State legislature is
23 currently considering such a law and that it will require a
24 substantial fiscal note -- if this contract is not signed, thi
25 protection is becoming more important with each passing week.

1 Federal legislation is also occurring to make this a
2 requirement.

3 All of the items that I have mentioned are provided at
4 the beginning of the contract for all schools. It is not clear
5 when ISIS would put any of these kinds of things in place, in
6 the first six months.

7 Finally, there is a capacity index. I guess I have to
8 comment that Mr. Ney said three times that the State's option
9 is to continue its existing network with the existing
10 contractor who is ISIS. There are some considerable problems
11 with that in terms of capacity. I have already said that the
12 existing network supported 7,000 and we have 50,000 computers.
13 We will get through the end of this school year. I do not know
14 what will happen next year if what we live with is this
15 existing network.

16 Currently ConnectTEN has five times as many computers as it
17 was designed for. This means there are a lot of computers that
18 can't access the network. It is not clear how much capacity is
19 in the ISIS proposal. However, ENA has guaranteed to deliver
20 guaranteed service levels at two pages, per minute, per student
21 for each of the 90,000 computers on the network. What does
22 this mean? Students sitting in a classroom waiting on
23 information to emerge on the screen are not learning; they are
24 waiting. Teachers know that waiting students does often mean
25 that problems occur in the classroom. This is an unacceptable

1 and impossible learning environment.

2 ENA built a measurable index. It is a combination of
3 equipment and communication lines. A combination of the two is
4 a part of any network to increase this guarantee and to provide
5 that guaranteed service level performance. They documented in
6 their response of observing teachers and students to design and
7 arrive at that level of service as being appropriate.

8 Finally, equipment reliability. ISIS combined three
9 functions into one piece of equipment rather than three, as ENA
10 is proposing. Therefore, their approach cannot be as robust or
11 reliable or effective as the specialized equipment that ENA
12 proposed. ISIS, therefore, has a single point of failure and a
13 greater likelihood of degradation of performance. Let me stop
14 there and see if you have any questions about the differences
15 of service levels?

16 COMMISSIONER HAWKINS: Any questions?

17 DEPUTY COMMISSIONER JONES: No.

18 MR. LEE: No.

19 MS. SHRAGO: Secondly, in terms of the
20 difference of why there is an apparent \$23 million difference
21 in the proposals. ENA's proposal included a critical migration
22 plan to return to the network to a functioning status within
23 the State's resources without E-rate funding. We understand
24 that we put a significant burden on the vendors to do this, to
25 go with lots of money or a little bit of money, but whatever

1 you do, don't take the network away from the children.

2 ENA presented a variety of options and equipment in the
3 communication line, that is detailed in their RFP, Pages 60,
4 61. They are five separate scenarios of those combinations.
5 They clearly documented sufficient funds for the delivery of
6 all services to all schools if E-rate funding disappears out
7 through 2,000. They do describe degradation of services and
8 they even anticipated how much it would be.

9 Even in the clarification letter of March 10, where ISIS
10 response was to clarify discrepancies in various places in
11 their proposal, there was still missing and misleading
12 information. The chart is on Page 5, and I have got some
13 copies of this.

14 MR. NEY: Page 5 of the?

15 MS. SHRAGO: Of the clarification letter.

16 MR. LEE: Let me ask at this time, Ms. Metcalf,
17 do we need to make some documents exhibits; the documents from
18 Mr. Ney the other day just to clarify the record?

19 MS. METCALF: Sure. What we can do is we will
20 make the record that was provided to the review committee, the
21 documents that are listed in my April 1st letter as well as the
22 supplemental documents and two April 2nd memos as well as an
23 April 3rd memo, Exhibit 1. That is the record provided by me
24 to the committee. Exhibit 2 will be the documents provided by
25 Mr. Ney on Friday including his April 3rd letter and the

1 attachment. We can make this document Exhibit 3.

2 (Whereupon, the aforementioned documents were
3 marked as Exhibit No. 1.)

4 MS. COTTRELL: I'm sorry, can I get a
5 clarification?

6 MS. METCALF: Sure.

7 MS. COTTRELL: You are making as an exhibit to
8 the record of this protest committee meeting, this review
9 committee on the protest, the documents that Mr. Ney filed with
10 regard to lifting of the stay on Friday?

11 MR. NEY: I would like for that to be
12 incorporated.

13 MS. METCALF: If the review committee chooses
14 not to accept that document, that is their decision, the
15 documents that he provided on Friday, the April 3rd letter as
16 well as the attachments.

17 MS. COTTRELL: I will just remind the committee
18 that on Friday Mr. Ney said this is not part of the protest,
19 this particular issue. But to the extent it includes documents
20 that refer to something that was not part of the protest, that
21 may have been excepted as part of lifting of the stay, I might
22 make sure that the record does not indicate that also.

23 MR. NEY: Given that we are not in a court of
24 law and this whole proceeding sort of runs right through, I
25 referred to that letter broadly, particularly with respect to

1 the property disposition issue. I would request that it be put
2 in there along with all of the other paper that we have
3 submitted, everything that has been put before you with respect
4 to the last two days.

5 COMMISSIONER HAWKINS: Does anyone have a
6 preference?

7 MR. LEE: Personally, I think it helps because
8 it does go over the arguments more so of the protest, but more
9 so the lifting of the stay. There might be some documents in
10 here about the lifting of the stay, but the majority of it
11 concerns the issues.

12 COMMISSIONER HAWKINS: Do I understand that to
13 be a motion?

14 MR. LEE: I make a motion.

15 DEPUTY COMMISSIONER JONES: I second.

16 COMMISSIONER HAWKINS: All in favor?

17 (Whereupon, all members of the review committee
18 said, Aye.)

19 COMMISSIONER HAWKINS: Let the documents
20 submitted be a part of the record.

21 MS. METCALF: This is Exhibit No. 2.

22 COMMISSIONER HAWKINS: This will be No. 2 and
23 what was just passed out will be Exhibit No. 3.

24 MS. METCALF: Correct.

25 MR. LEE: Collective, there are two pages?

1 MS. METCALF: Yes.

2 (Whereupon, the aforementioned documents were
3 marked as Exhibit No. 2 and Collective Exhibit No. 3.)

4 MS. SHRAGO: I'm addressing the money issue and
5 the difference between the proposals. On the two sheets that
6 you have in front of you, there is a lot of technical details,
7 but in terms of the first one that was passed out, which in the
8 upper left-hand corner says, Ms. Jackie Shrago, March 10, this
9 was part of the clarification answers that the review committee
10 received. I would point out this last column, on the right
11 side, it says upgrade with E-rate; do you see that?

12 MR. LEE: This is from ENA?

13 MS. SHRAGO: No, no, this is from ISIS.

14 MR. LEE: Okay.

15 MS. SHRAGO: Both of these documents are from
16 the ISIS documents. So on this page, which is in their
17 clarification, they said they were going to provide all of this
18 equipment in that last column without E-rate. On this
19 document, which they also referred to in that same letter and
20 they confirmed that they wanted us to use this table on the
21 last far-right column, it says without E-rate funding and there
22 is none of that equipment through the entire contract.

23 The difference in that contract equipment, just on purchase
24 price alone from their numbers, is about \$3.7 million. There
25 is no source identified from where that money would come from.

1 This Exhibit 4 -- wait let me give you this document. We are
2 dealing with the far right-hand column of those pages.

3 COMMISSIONER HAWKINS: This will be Exhibit 4.

4 MS. METCALF: Correct.

5 (Whereupon, the aforementioned document was
6 marked as Exhibit No. 4.)

7 MS. SHRAGO: This Exhibit 4 was requested by the
8 State which could further clarify the study of the monthly cost
9 that the State be obligated to. There is a major discrepancy
10 between one month and six months costs. If you look at the top
11 of the heading it says, cost per site, per month and a six
12 month cost per site. It is real easy to see. When you get
13 here, it is the same. And yet these are ISDN services that you
14 pay for on a monthly basis.

15 So all of those numbers are the same whether it is one
16 month or six months. All of these numbers are the same whether
17 it is one month or six months all of the way down. There is
18 one number that ends up being changed in this row and one in
19 this row. So the \$8 million, the largest portion of it is the
20 same cost whether it is one month or six months.

21 Even if we assumed that they intended for the six month
22 cost to be the accurate number, okay; it appears unlikely that
23 there is a tariff from BellSouth to support the cost of the
24 communication lines that they have offered. Mr. Ney
25 specifically said that he didn't think BellSouth would pump in

1 services that they weren't paid for; I would suspect he is
2 right. We are talking about major, major amounts of services.

3 It is a little difficult for me to say exactly how much it
4 could be. It could be \$1 million a year; it could be \$3
5 million a year. I would rather not speculate on those numbers,
6 but there is no doubt that it is significant. You can't buy a
7 frame relay service for the same price you can by a T1 service.

8 While it might appear from these documents that are
9 obviously given to us in this process of the RFP response, the
10 State could be getting a lot of equipment and communication
11 lines for nothing or for a real bargain. It was a grave
12 concern when we noted that ISIS had a negative net worth of
13 \$1.6 million. In the D&B statements that they provided, they
14 have to credit rating status.

15 I guess it might be helpful if you look at the proposal;
16 there is several D&B reports that are in here. Not only does
17 ISIS not have a credit rating, its parent company, Great
18 Universal, also was given no credit rating status by D&B. When
19 you look at the third and fourth companies that go in this
20 chain, there is one that is called MC -- MIC and then one that
21 is called Millicom, that is the top parent.

22 According to D&B it is apparently the fourth corporation in
23 the chain that owns ISIS. There is no credit information for
24 this Luxembourg company, which was started in 1992 and operates
25 as "A Management and Public Relations Consultant" according to

1 the D&B's documents.

2 My understanding of subsidiaries is that when we are
3 dealing with a subsidiary of negative net worth, the State
4 cannot go beyond that subsidiary unless there is a guarantee in
5 the documents that we have been provided by any of those other
6 entities that own a 100 percent of the stock of ISIS.

7 So we have grave concerns about the facts of what it is
8 that they have provided to us. In terms of the documents, can
9 they deliver it? It is the price at which they can be
10 delivered and could they stand by it if, in fact, they had to
11 deliver it? Let me stop there and see if you have any
12 questions?

13 COMMISSIONER HAWKINS: Any questions, I don't.

14 DEPUTY COMMISSIONER JONES: I don't.

15 MR. LEE: I don't.

16 MS. SHRAGO: Let me deal with Item No. 4 in the
17 protest letter, which is the lack of ENA's financial
18 responsibility to fulfill its obligations. I am referring,
19 again, back to the RFP. The documentation of financial
20 responsibility, financial stability and sufficient financial
21 resources to provide the scope of services to the State in the
22 volume projected and within the time frames required and with
23 the constraints of the FCC fund. More specifically, said
24 documentation shall include other pertinent financial
25 information by which the State may reasonably formulate an

1 opinion about the relevant stability and financial strength of
2 the proposer. This information must include the most recent
3 audited financial statement. In leu of such, a banking
4 reference and a credit rating by a rated service is required."

5 All of those required items were included in the ENA
6 proposal. The ENA audited financial statement showed a net
7 worth of 1.5 million, compared to an unaudited 1.6 negative net
8 worth for ISIS. ENA showed an audited net income of \$48,000.
9 ISIS showed an unaudited net loss of 1.45 million. And ENA
10 banking records were included.

11 ISIS did not provide audited financial statements. ISIS
12 provided a D&B documentation but no credit rating as required.
13 Quoting from the D&B documents they provided, "the absence of a
14 rating indicates that the information available to D&B does not
15 permit us to assign a rating to this business." In this case
16 no rating was assigned because of D&B "unbalanced" assessment
17 of a company, December 31, '97, fiscal financial statement.
18 That is D&B's statement, not mine.

19 It was indicated earlier that ISIS' parent nor its top
20 parent has a credit rating. ISIS included a bank letter that
21 stated it had a satisfactory checking account. That is the
22 statement there, but made no reference of its relationship with
23 the bank. A credit line was identified for the parent, but as
24 you pointed out, Mr. Lee, there was no indication of a
25 guarantee that any portion of that credit line is available